

Amendment No. 1 to HB0763

Lamberth  
Signature of Sponsor

**AMEND Senate Bill No. 724**

**House Bill No. 763\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 40, is amended by adding the following as a new chapter:

**40-40-101.**

As used in this part:

(1) "DUI monitoring fund" means the fund created by § 55-10-419 that is available for financial assistance when a person is determined by the court to be unable to pay for their monitoring program fees but is required by court order to enroll in the monitoring program;

(2) "Electronic monitoring" means any device that tracks a person through satellite and communicates that information through cellular towers, giving the device's location and status, including battery percentage, device tampering, zone compliance or noncompliance, or a device that uses radio frequency (RF) to determine if a person is in a specific location such as house arrest by landline or ethernet, which is not global positioning system related;

(3) "Monitoring program" means a program whereby a person who has been charged with or convicted of a criminal offense is released from custody on bail, pre-trial diversion, judicial diversion, probation, or parole, and one (1) of the conditions of release is that the person participates in a program whereby the person's alcohol use, drug use, or geographic location is monitored by a public monitoring entity or a private monitoring entity either electronically or physically

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through required in-person checks, testing, screening, global positioning system devices, transdermal monitoring devices, and other electronic devices;

(4) "Other alcohol monitoring device" means any device that monitors a person's alcohol level, including, but not limited to, random breath testing or urine testing;

(5) "Private monitoring company":

(A) Means any private entity, whose business, in whole or in part, consists of contracting with a public entity for the purpose of monitoring persons whom a court or magistrate has ordered, as a condition of release, to participate in a monitoring program, and includes any private company that holds a direct contract with a manufacturer of transdermal monitoring, electronic monitoring, or other alcohol monitoring devices; and

(B) Does not include an ignition interlock provider as defined in § 55-10-411(h)(3) or an original equipment manufacturer;

(6) "Private probation services provider" means a private entity that contracts with the department of correction pursuant to § 40-35-302(g) and § 40-35-303(p), to provide services and supervision to defendants who have been placed on probation by the court;

(7) "Public monitoring entity" means a department or other entity of state or local government that has a duty, in whole or in part, to supervise persons who have been charged with or convicted of a criminal offense and that may conduct

a monitoring program or contract with a private monitoring company to conduct a monitoring program for persons under the entity's supervision; and

(8) "Transdermal monitoring" means any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per half hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.

**40-40-102.**

This part shall apply to:

(1) A person who has been ordered by a court to participate in a monitoring program as a condition of bail, probation, parole, pre-trial diversion, judicial diversion, or any other form of release. A voluntary agreement between a person and a private entity to enter a monitoring program is not subject to this part;

(2) A certified private monitoring company; and

(3) A public monitoring entity.

**40-40-103.**

(a) To be a certified private monitoring company and do business in this state, the company must register with the department of commerce and insurance every two

(2) years. A company seeking to be registered shall send the department documentation suitable to the commissioner or the commissioner's designee of proof of all of the following:

(1) That the owner of the company is a Tennessee resident, the company is incorporated in this state, or the company has appointed an agent in this state who is authorized to accept service of process for the company;

(2) That neither the owner or owners of the company nor any of the company's officers have been convicted of an offense classified as a felony in this or any other state unless the person convicted has received a certificate of employability or the person's rights of citizenship have been restored pursuant to Title 40, Chapter 29.

(3) That the company carries a comprehensive liability insurance policy in an amount of not less than one million dollars (\$1,000,000); and

(4) Payment of a biennial registration fee in an amount set by the department of commerce and insurance by rule.

(b)

(1) If a private probation services provider is under contract with the department of correction to provide electronic monitoring services or any other service that is within the definition of a private monitoring company, and the private probation services provider will be providing or offering monitoring services on or after July 1, 2017, the private probation services provider is required to register and be certified by the commissioner of commerce and insurance.

(2) Proof that the private probation services provider is registered with and approved by the department of correction is sufficient to satisfy the requirements of subsection (a). Upon proof that the private probation services provider is current on all fees the provider is required to pay to the department of correction, no additional fee shall be required to register or do business as a private monitoring company.

(c)

(1) If the commissioner of commerce and insurance determines that a private monitoring company meets all of the requirements of subsection (a), or a

private probation services provider demonstrates that the provider is registered and certified by the department of correction to provide monitoring services, the commissioner shall add the company or provider to the list of registered private monitoring companies.

(2) The department shall maintain a list of all currently registered private monitoring companies on its website. Such list shall be updated within thirty (30) days of a new company becoming registered or a company's biennial registration expiring.

**40-40-104.**

(a) Each private monitoring company or public monitoring entity that conducts a monitoring program containing participants who are required to wear an electronic monitoring device shall send a report via email or in person, if there is confirmed information that a participant has committed a violation by cutting the strap of the electronic monitoring device, to the court or magistrate having jurisdiction over the participant and the participant's bonding company, if applicable. If the participant is charged with or convicted of an offense for which there is a victim, such as a sexual offense, stalking, or domestic assault, the company or entity shall make all reasonable efforts to also notify the victim or victims. If a victim wishes to be notified of any cut-strap violation by the alleged perpetrator of the offense, the victim has a duty to furnish current contact information to the private monitoring company or public monitoring entity so that the company or entity is able to contact the victim, if necessary. The report of violation required by this subsection (a) shall give the status of the person being monitored and shall include the person's record of compliance or noncompliance with the monitoring program.

(b) Each private monitoring company or public monitoring entity shall be required to send the court or magistrate having jurisdiction over the participant a status letter, for

each appearance within twenty-four (24) hours of said appearance, which shall contain compliance or noncompliance reports for alcohol consumption, drug consumption, zone violations, tampering, and any other restrictions imposed by the court or magistrate. The status letter shall also contain global positioning location documents with time stamps provided to show zone violations.

(c) All violations of a transdermal or electronic monitoring device or a violation of a condition imposed upon the participant's release to a monitoring program shall be reported to the court or magistrate ordering a monitoring program within twenty-four (24) hours or the following business day of the confirmed violation.

**40-40-105.** Any pretrial release or diversion agent, bonding company, probation officer, or parole officer who wishes to have direct access through a web portal is required to be trained by an agent of a private monitoring company.

**40-40-106.** Any monitoring program participant ordered to wear a transdermal or electronic monitoring device may choose a public monitoring entity, if available, or any certified private monitoring company, to install and monitor the transdermal or electronic monitoring device. However, if the jurisdiction is under contract with a specific vendor or agency, the program participant shall use that vendor or agency.

**40-40-107.**

(a) All monitoring fees paid to a private monitoring company or a public monitoring entity shall be paid for by the participant in the amount set forth by the monitoring program's participation agreement, unless the participant is deemed indigent pursuant to § 55-10-419. Notwithstanding § 55-10-419(a)(1)(A), if the participant is determined by the court or magistrate to be indigent, the DUI monitoring fund established in § 55-10-419 shall assist by paying up to two hundred dollars (\$200) per person, per device and will assist the person throughout the duration of the person's participation in the monitoring program. In order for the monitoring company to receive

reimbursement, an order for DUI monitoring fund assistance form shall be completed by the court or magistrate along with a uniform affidavit of indigency form to the monitoring company. The order for DUI monitoring fund assistance shall contain the indigent participant's name; date of birth; case number; length of time the person is to be enrolled; number and types of monitoring devices ordered; how much the state is required to pay, not to exceed two hundred dollars (\$200); and how much the participant is required to pay. The monitoring company shall submit the DUI monitoring fund assistance form and the affidavit of indigency form to the DUI monitoring fund created in § 55-10-419.

(b) The administrative office of the courts shall create a uniform order for DUI monitoring fund assistance to be used when, pursuant to subsection (a), the court or magistrate determines that the participant is indigent. The form shall contain, at least, the information set out in subsection (a).

(c) The timely payment of fees associated with the monitoring program shall be considered a condition of every monitoring program ordered by the court or magistrate. A participant shall be considered delinquent after forty-five (45) consecutive days of non-payment of any monitoring fees for which the participant is responsible. If a private monitoring company believes the participant to be in violation of the monitoring agreement based upon the participant's payment delinquency, it shall file a petition with the court or magistrate. If the court or magistrate determines a hearing on the issue of the participant's delinquency is necessary, the court or magistrate shall hear the petition at the earliest time available. At the hearing, the participant may show that there has been a material change in the participant's financial status. If the court or magistrate finds the participant's change in financial status is true and renders the participant indigent, the court or magistrate may keep the participant enrolled in the monitoring program and complete an order for DUI monitoring fund assistance payment and the

company shall send the order to the DUI monitoring fund created in § 55-10-419. If the court or magistrate finds that the participant's claim for a material change in financial status has not occurred or the change does not render the participant indigent, the participant violates the terms of the participant's release and the court or magistrate may take any authorized action, including the court revoking the participant's probation or the magistrate revoking the participant's bail.

**40-40-108.** The knowing failure of a private monitoring company or public monitoring entity to send the notifications required by this part, such as status letters, timely violation reports, or other requested reports, shall be grounds for the court or magistrate to discipline the private monitoring company or public monitoring entity. If the court or magistrate determines that the suspension, revocation, or removal from the approved monitoring company list in that jurisdiction is warranted, the court or magistrate shall conduct a hearing to determine if suspension, revocation, or list removal is warranted. The private monitoring company or public monitoring entity shall have the right to attend the hearing, offer evidence that there was no violation, or offer evidence in mitigation of the violation. If the court or magistrate finds that there was a violation warranting suspension, revocation, or removal from the approved list, it may do so only if the sanctions are based on and limited by the standards, local policies, and procedures in effect at the time and in the location where the violation occurred. The court or magistrate may impose sanctions less severe than suspension, revocation, or removal from the approved list without a hearing.

**40-40-109.** For each participant that is enrolled in a transdermal or electronic monitoring program, the private monitoring company shall pay to the state a fifteen dollar (\$15.00) one-time fee. Those funds shall be deposited into the DUI monitoring fund created by § 55-10-419.

SECTION 2. Tennessee Code Annotated, Section 40-11-118(d)(2), is amended by adding the following new subdivision:



( ) The use of a global positioning system (GPS) device for the duration of the time the defendant is on bail;

SECTION 3. Tennessee Code Annotated, Section 40-7-103, is amended by adding the following new subdivision to subsection (a):

( ) When a person has committed a violation of § 40-11-118(g)(1)(A) or § 40-11-118(g)(1)(B);

SECTION 4. Tennessee Code Annotated, Section 40-11-132, is amended by adding the following new subdivision:

( ) Violation of a transdermal, electronic, or other alcohol monitoring program requirement;

SECTION 5. For the purpose of the administrative office of the courts developing and distributing a DUI monitoring fund assistance form and private monitoring companies commencing the registration process with the department of commerce and insurance, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2017, the public welfare requiring it.